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*Attorney for Defendants 110 Sand Company, C. Broman Transportation Corp., and Farmingdale Sand Corp.*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

Plaintiff,

v.

110 SAND COMPANY, a partnership;  
C. BROMAN TRANSPORTATION  
CORP; FARMINGDALE SAND  
CORP.; and BROAD  
HOLLOW ESTATES, INC.

Defendants.

-----X

Case No. 09-4209

(Seybert, J.) (Boyle, M.J.)

**FIRST SET OF INTERROGATORIES BY DEFENDANTS  
TO PLAINTIFF UNITED STATES OF AMERICA**

Pursuant to Federal Rule of Civil Procedure 33, and the Court's April 16, 2010 Scheduling Order, Defendants 110 Sand Company, C. Broman Transportation Corp., Farmingdale Sand Corp., and Broad Hollow Estates Inc. (collectively, the "Defendants"), by and through its undersigned counsel, serves its First Set of Interrogatories on Plaintiff United States of America ("Plaintiff"). Defendants request that Plaintiff respond to these Interrogatories, under oath by any of its officers competent to testify on their behalf, and who know the facts about which inquiry is made, and to serve such answers **on or before June 30, 2010** pursuant to the Court's Scheduling Order.

**INSTRUCTIONS**

If any of the following Interrogatories cannot be answered in full, please answer to the extent possible, specify the reason for your inability to answer the remainder and state whatever information or knowledge you have concerning the unanswered portion. When your investigation is incomplete, give all information known as of the date of signing your answer. Where exact data is unavailable, supply estimated data, indicate that you have done so, and explain the basis on which the estimate is made.

With respect to any information that is withheld based upon Plaintiff's assertion that such information is privileged or is contained in a privileged document and/or communication, Plaintiff should identify the document and/or communication and the basis for the asserted privilege as set forth in Local Rule 26.2(a)(2)(A); and state the Interrogatory to which each document and/or communication is responsive.

When an Interrogatory or any of its sub-parts calls for Plaintiff to “set forth in detail” one of the Plaintiff’s allegations, answers or contentions, Plaintiff should set forth each allegation, answer or contention and identify each document and oral communication that relate to such allegations, answers or contentions. Each person who possesses information related to any allegation, answer or contention shall be identified.

Pursuant to Rule 33(b)(1) of the Federal Rules of Civil Procedure, no part or sub-part of an Interrogatory shall be left unanswered merely because an objection is interposed to another part or sub-part of the interrogatory.

Any term used in the singular shall be deemed to include the plural where appropriate and vice versa. The feminine shall be deemed to include the masculine and vice versa. The word “and” shall be deemed to include the disjunctive “or” and vice versa. “Any” shall be understood to include and encompass “all” and vice versa.

Whenever an Interrogatory requires that an action, omission, meeting, conference, discussion, occurrence, happening, instance or event be described, a full description thereof shall include the following: (a) the date and location thereof; (b) the dialogue of any oral communication and every document that refers to or was made during the course of or as a result thereof; and (c) the identity of all witnesses or participants.

Whenever an Interrogatory calls for information with respect to “each” one of a particular type or class of matters, events, persons or entities, of which there is more than one, all such information shall be separately listed, set forth or identified.

Each subpart of any Interrogatory should be separately answered. Interrogatories or subparts should not be combined for the purpose of supplying a common answer, and answers

should not be supplied by reference to the answer to another Interrogatory or subpart unless the answer is completely identical to the referenced answer.

These Interrogatories shall be deemed continuing and supplemental answers are to be submitted periodically as additional information becomes available.

Please take notice that these Interrogatories are deemed to be continuing up to and including the first day of trial of this action. If at any time you or any person acting on your behalf obtains additional information called for by these Interrogatories between the time of your response and the time set for trial, please serve supplemental sworn answers setting forth such information.

### **DEFINITIONS**

Unless otherwise specified, or the context of the Interrogatory requires otherwise, answers to these Interrogatories shall be governed by the following definitions:

1. “Act” refers to the Clean Air Act, 42 U.S.C. §7401 *et seq.*
2. “BACT” refers to Best Available Control Technology as defined in Title 40, Part 52.21 of Code of Federal Regulations and as interpreted by administrative and judicial bodies.
3. “Communication” as defined under Local Rule 26.3(c)(1).
4. “Concerning” as defined under Local Rule 26.3(c)(7).
5. “Document” as defined under Local Rule 26.3(c)(2).
6. “Employee” means any past or present employee, broker, manager, officer, secretary, attorney (associate or partner), paralegal, accountant, agent, consultant and/or an independent contractor.
7. “Identify” means, when used in reference to:
  - a. a natural person: as defined under Local Rule 26.3(c)(3).
  - b. a company, corporation, association, joint venture, sole proprietorship, firm, partnership or any other business or legal entity which is not a natural person: its full name now and at the time in question; date of incorporation or juridical status;

description of the type of entity now and at the time in question; date and place of formation; current juridical status; nature of business activities in which it is engaged or was engaged at the time in question;

- c. a document: as defined under Local Rule 26.3(c)(4).
- d. an oral statement or communication:
  - 1. the date and place where uttered;
  - 2. the place where received;
  - 3. the substance thereof;
  - 4. the means or medium employed for transmission;
  - 5. the identification of each person to whom such statement or communication was made, each person who was present when such statement or communication was made, and each person who was present when such statement was received;
- e. an admission or declaration:
  - 1. the date made; the name and address of the place where the admission and/or declaration was made;
  - 2. the identity of the person who allegedly made the admission and/or declaration;
  - 3. the identity of the person to whom the admission and/or declaration was made;
  - 4. the exact contents of the admission and/or declaration;
  - 5. whether the admission and/or declaration was oral or written;
  - 6. the identification of any document pertaining to each such written admission and/or declaration; and
- f. a written statement:
  - 1. the names and addresses of the persons who gave statements;
  - 2. the exact time, date and location where statements were made;
  - 3. the names and addresses of the persons who obtained such statements;
  - 4. if recorded, the nature and present custody of said reporting;

5. the names and addresses of any witnesses to statements;
6. the identification of all documents which discuss, reflect or relate to statements.
8. “Flare” refers to the flare constructed in 1992 at the landfill located at 136 Bethpage-Spagnoli Road, Melville, New York
9. “Information” shall be expansively construed and shall include, but not be limited to facts, data, opinions, images, impressions, and concepts.
10. “Landfill” refers to the landfill located at 136 Bethpage-Spagnoli Road, Melville, New York.
11. “Person” as defined under Local Rule 26.3(c)(6).
12. “Prevention of Significant Deterioration” or “PSD” is defined under Act and under the implementing regulations under Title 40, Part 52.21 of the Code of Federal Regulations, and as interpreted by administrative and judicial bodies.
13. The terms “regarding,” “regards,” “relative to,” or “relating to,” “referring to” or “reflecting” or any respective derivative thereof, as used herein, include and shall mean referring to, responding to, pertaining to, connected with, comprising, memorializing, embodying, commenting on, discussing, showing, describing, reflecting, recording, evidencing, analyzing, constituting, refuting, disputing, rebutting, controverting, contradicting, representing, supporting, stating, citing and inferring.
14. “Statement” means any oral or written expression however communicated or recorded.
15. “You,” “your” and “yourself” refer to the party to whom the following Interrogatories are addressed, and its agents, representatives, officers, directors, employees and predecessors.

16. “USEPA” shall mean the United States Environmental Protection Agency.

### **INTERROGATORIES**

1. Describe the basis for Plaintiff’s contention that the Landfill is a “major stationary source” under the Act for hydrogen sulfide, including at what time periods Plaintiff contends that the Landfill is or was a “major stationary source” for hydrogen sulfide emissions and the name and affiliation of each individual, whether Plaintiff’s employees, contractors and consultants, that has been or is involved in making the determination that the Landfill is a “major stationary source.”

2. Describe the Documents that support the Plaintiff’s contention that the Landfill had the potential to emit “at least 1,621.5 tons per year” of hydrogen sulfide, including the name and affiliation of each individual, whether Plaintiff’s employees, contractors and consultants, that has been or is involved in making the determination as to the potential to emit.

3. Describe the basis for Plaintiff’s contention that the Landfill is a “major stationary source” under the Act for sulfur dioxide, including at what time periods Plaintiff contends that the Landfill is or was a “major stationary source” for sulfur dioxide emissions and the name and affiliation of each individual, whether Plaintiff’s employees, contractors and consultants, that has been or is involved in making the determination that the Landfill is a “major stationary source.”

4. Describe the Documents that support the Plaintiff’s contention that the Landfill had the potential to emit “at least 2,991 tons per year” of sulfur dioxide, including the name and

affiliation of each individual, whether Plaintiff's employees, contractors and consultants, that has been or is involved in making the determination as to the potential to emit.

5. Describe the basis for the allegation that emissions for sulfur dioxide from the flare violated (a) the NAAQS and (b) the PSD increment.

6. Describe the basis for the Plaintiff's contention that "unless restrained by an order of the Court, Defendants will continue to violate the Act" either with respect to hydrogen sulfide or to sulfur dioxide emissions.

7. Identify by location, name, and identity of the owner and operator, each and every landfill that has applied for a PSD permit at any time during or after 1981 on the basis of potential hydrogen sulfide emissions, including the amount of hydrogen sulfide emitted from such landfill.

8. Identify by location, name, and identity of the owner and operator, each and every landfill that has performed an analysis or made a determination as required under 40 CFR 52.21(n) with regard to the landfill's hydrogen sulfide emissions or to sulfur dioxide emissions from a flare.

9. List all Documents either in Plaintiff's possession or known to Plaintiff that support, and describe the basis for, Plaintiff's allegation that hydrogen sulfide emissions may impair or have an adverse impact on visibility, soils or vegetation.



10. List all Documents or other evidence either in Plaintiff's possession or not in Plaintiff's possession but known to Plaintiff that support, and describe the basis for, Plaintiff's allegations in ¶¶ 49, 67, 80 of its Amended Complaint that there is "commercial, residential and industrial growth associated with the source."

11. List all Documents either in Plaintiff's possession or not in Plaintiff's possession but known to Plaintiff that demonstrate that USEPA has made a BACT determination with respect to emission of hydrogen sulfide from a landfill (other than any actions taken with respect to the Landfill at issue in this action), and identify by location, name, and identity of the owner and operator, each and every landfill that has been required by EPA to install hydrogen sulfide removal, control or monitoring technology based on a BACT determination made by USEPA.

12. List all Documents either in Plaintiff's possession or not in Plaintiff's possession but known to Plaintiff that demonstrate that USEPA has made a BACT determination with respect to emission of sulfur dioxide from a landfill (other than any actions taken with respect to the Landfill at issue in this action), and identify by location, name, and identity of the owner and operator, each and every landfill that has been required by EPA to install sulfur dioxide removal, control or monitoring technology based on a BACT determination made by USEPA.

13. Identify by location, name, and identity of the owner and operator, each and every landfill that applied for a PSD permit on or after 1992 in any state on the basis of actual or potential sulfur dioxide emissions from a landfill flare, and in each case provide, the amount of

sulfur dioxide generated and the control technology actually installed to control sulfur dioxide emissions.

14. Describe the basis of Plaintiff's contention, if You do so contend, that the State of New York Department of Environmental Conservation has not issued to the Defendants an enforceable permit that limits sulfur dioxide emissions from the Landfill's flare to 90 tons per year.

15. Describe the basis of Plaintiff's contention, if You do so contend, that a new stationary source of sulfur dioxide emissions located in an attainment area for sulfur dioxide subject to an enforceable permit, which limits the emission of sulfur dioxide to 90 tons per year, is required to have a PSD permit governing sulfur dioxide emission issued under Section 165 of the Clean Air Act, and provide the statute, rule, or policy that supports this contention.

16. Describe the basis of Plaintiff's contention, if You do so contend, that the emissions from the Flare are currently violating the NAAQS or PSD increment.

17. Describe the basis of Plaintiff's contention, if You do so contend, that the Landfill has the potential to violate the NAAQS or PSD increment in the future.

18. List each of the Plaintiff's employees, contractors and consultants who have: (a) evaluated Defendants' releases of hydrogen sulfide; (b) evaluated Defendants' emission of sulfur dioxide; (c) evaluated the Paques Thiopaq control technology for application to a landfill gas

stream; or (d) are or have been in the past involved in evaluating and regulating Landfill gas emission control for USEPA, and state which of these categories of evaluation each such employee, contractor or consultant has or may have knowledge.

19. Describe the basis of Plaintiff's contention, if You do so contend, that technology was available in 1991 to remove sulfur from a C&D Debris landfill gas stream or a landfill flare that was also "economically achievable."

20. List each document in your possession or control that you referred to or otherwise relied upon in your answers to any of these Interrogatories.

21. Identify the person who is certifying these Interrogatories and the date upon which these Interrogatories are answered.

22. Identify each person who assisted in answering these Interrogatories and Defendants' First Request for Production of Documents. In answering this Interrogatory, include both Plaintiffs' employees and non-employees, including consultants, contractors and/or any other person who participated.

23. Identify each person who has knowledge about the allegations set forth in the Amended Complaint. In answering this Interrogatory, include both Plaintiffs' employees and non-employees, including consultants, contractors, and/or any other person who may have such knowledge and to which allegations in the Complaint such knowledge pertains.

Dated: New York, New York  
May 21, 2010

Respectfully submitted,

K&L GATES LLP

By: /s/ B. David Naidu

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*Attorney for Defendants 110 Sand Company, C. Broman  
Transportation Corp., and Farmingdale Sand Corp.*

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 21, 2010, I have caused a true and exact copy of the foregoing **First Set of Interrogatories by Defendants to Plaintiff United States of America** to be served both electronically and by first class mail on counsel of record as follows:

Deborah B. Zwany, Esq.  
David Eskew, Esq.  
United States Attorneys Office  
Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201-1820

*Attorneys for Plaintiff United States of America*

\_\_\_\_\_/s/ B. David Naidu\_\_\_\_\_